UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ALEXANDER LEON,	:	
Petitioner,	:	
	:	3:93cr199 (PCD)
vs.	:	3:00cv2261 (PCD)
	:	
UNITED STATES OF AMERICA,	:	
Respondent.	:	

RULING ON MOTION TO ALTER OR AMEND JUDGMENT

Petitioner moves pursuant to FED. R. CIV. P. 59(e) and FED. R. CIV. P. 60 to alter or amend the judgment denying his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. The motion is **denied**.

I. BACKGROUND

On February 4, 1994, a jury found defendant guilty of conspiring to possess with intent to distribute cocaine, *see* 21 U.S.C. §§ 841, 846, and cocaine base and knowing and intentionally possessing with intent to distribute and two separate counts of distributing more than five grams of cocaine base, *see* 21 U.S.C. § 841. On September 28, 1994, defendant was sentenced to life imprisonment, which judgment entered on October 4, 1994. On November 28, 2000, defendant moved to vacate or modify the sentence pursuant to 28 U.S.C. § 2255, arguing that his sentence of life imprisonment without the requisite findings as to amounts of drugs involved violated *Apprendi v. New Jersey*, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000). On July 19, 2001, defendant's motion was denied as filed outside the one-year statute of limitations applicable to § 2255 petitions.

II. DISCUSSION

Defendant argues that the issue presented, specifically whether the date on which *Apprendi* was decided signifies a starting point for the one-year statute of limitations, was resolved in *Tyler v. Cain*, 533 U.S. 656, 121 S. Ct. 2478, 150 L. Ed. 2d 632 (2001). *Tyler* does resolve the issue, but not in the manner suggested by petitioner.

The relevant language in § 2255 establishing the one-year statute of limitations provides that "[t]he limitation period shall run from . . . the date on which the right asserted was initially recognized by the Supreme Court, if that right has been *newly recognized* by the Supreme Court *and made retroactively applicable* to cases on collateral review . . . ." 28 U.S.C. § 2255(3) (emphasis added). A new rule is not "'made retroactive to cases on collateral review' unless the Supreme Court holds it to be retroactive." *Tyler*, 533 U.S. at 663 (interpreting 28 U.S.C. § 2244(b)(2)(A)).

The Second Circuit Court of Appeals has held that "*Apprendi* is not a new rule of constitutional law which has been made retroactive to cases on collateral review by the Supreme Court"when interpreting the language of § 2255 applicable to the filing of second or successive petitions. *See Forbes v. United States*, 262 F.3d 143, 145 (2d Cir. 2001). Although the reference to "made retroactive" at issue is used in the context of the one year statute of limitations applicable to the initial filing of a § 2255 petition, a definition applied to a phrase used repeatedly throughout the same statute, in this case § 2255, presumptively applies to all references to the same phrase. *See Atlantic Cleaners & Dyers, Inc. v. United States*, 286 U.S. 427, 433, 52 S. Ct. 607, 608- 609, 76 L. Ed. 1204 (1932). As such, petitioner's *Apprendi* claim is foreclosed by the holding in *Forbes*.[1]

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[1] Petitioner also appears to argue that the retroactive application of *Apprendi* is not relevant to his claim. It suffices to say that absent the intervention of *Apprendi*, and thus the invocation of one

III. CONCLUSION

Petitioner's motion to alter or amend the judgment denying his § 2255 petition (Doc. No. 451) is **denied**.

SO ORDERED.

Dated at New Haven, Connecticut, March ___, 2003.

Peter C. Dorsey
United States District Judge

of the several dates in § 2255 from which the one-year statute of limitation potentially tolls, his petition would be deemed filed well beyond the statute of limitations.